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October Term, 1952

No. 475

Consolidated Steel Workers of [illegible], et al.,

Petitioners,

vs.

Loew's Incorporated, et al.,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari

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SUBJECT INDEX

PAGE

The opinions below 1

Jurisdiction 2

Questions presented 2

Statutes involved 2

Additional statement of facts 2

This case does not present any novel or important question of federal law 6

There is no conflict of decision between courts of appeals which would warrant the grant of certiorari here 7

The court below was clearly correct in holding that a claim under the Sherman Act is not stated here because the alleged damages did not result from any act prohibited by the antitrust laws 8

A valid alternative ground for the decision below is that it would invade the exclusive jurisdiction of the National Labor Relations Board for the federal courts to provide a remedy here either by way of damages or injunction 13

The decision of the court of appeals is also supportable on the ground that petitioners were not injured in their business or property within the meaning of the Sherman Act 18

Conclusion 19

Appendix:

Analysis of the allegations of the complaint and of the complaints in intervention and comparison of those allegations with the provisions of the Labor Act ..... App. p. 1

TABLE OF AUTHORITIES CITED.

CASES	PAGE
Allen Bradley Co. v. Local Union No. 3, 325 U. S. 797	10, 11
Amalgamated Utility Workers v. Consolidated Edison Co., 309 U. S. 261	13
Amazon Cotton Mills v. Textile Workers Union of America, 167 F. 2d 183	14
Anderson v. Ship Owners, 272 U. S. 359	7
Apex Hosiery Company v. Leader, 310 U. S. 469	9, 10
Caha v. United States, 152 U. S. 211	15
Carbonic Gas Co. v. Pure Carbonic Co., 4 Fed. Supp. 992	12
Corey v. Boston Ice Co., 207 Fed. 465	18
Gardella v. Chandler, 172 F. 2d 402	7, 18
Gerli v. Silk Ass'n of America, 36 F. 2d 959	18
Glenn Coal Co. v. Dickinson, 72 F. 2d 885	9
Hunt v. Crumboch, 325 U. S. 821	10
Jack v. Armour & Co., 291 Fed. 741	9
MacKay v. Loew's, Inc., et al., 84 Fed. Supp. 676; affd., 182 F. 2d 170; cert. den., 340 U. S. 828; reh. den., 340 U. S. 885	6
Oregon Steam Nav. Co. v. Winsor, 87 U. S. 64	12
Paramount-Famous-Lasky Corporation v. National Theatres Corporation, 49 F. 2d 64	12
Peterson v. Borden Co., 50 F. 2d 644	9
Phelps-Dodge Corp. v. Labor Board, 313 U. S. 177	13
Pittsburgh Plate Glass Co. v. N. L. R. B., 313 U. S. 146	15
Roseland v. Phister, 125 F. 2d 417	7
Schatte v. IATSE, 70 Fed. Supp. 1008; affd., 165 F. 2d 216; cert. den., 334 U. S. 812	6, 7
Schatte v. IATSE, 84 Fed. Supp. 669; affd., 182 F. 2d 158; cert. den., 340 U. S. 827; reh. den., 340 U. S. 885	6, 7, 9, 13, 14

PAGE

Studio Carpenters Local Union No. 946 v. Loew's, Inc., et al., 84 Fed. Supp. 675; affd., 182 F. 2d 168; cert. den., 340 U. S. 828; reh. den., 340 U. S. 885 6

Suckow Borax Mines Consolidated, Inc. v. Borax Consolidated Limited, et al., 185 F. 2d 196 9

Terrio v. S. N. Nielsen Construction Co., 30 Fed. Supp. 77 19

United Brick, Etc. Workers v. Junction City Clay Company, 158 F. 2d 552 ..... 9, 10

United Electrical Radio & Machine Workers of America v. International Brotherhood of Electrical Workers, et al., 115 F. 2d 488 13

United States v. A. F. of Musicians, 47 Fed. Supp. 304; affd., 318 U. S. 741 9

United States v. Carrozzo, 37 Fed. Supp. 191; affd., 313 U. S. 539 19

United States v. Hutcheson, 312 U. S. 219 ..... 9, 17, 19

United States Navigation Co. v. Cunard Steamship Co., 50 F. 2d 83; affd., 284 U. S. 474 16

Vines v. General Outdoor Advertising, 171 F. 2d 417 7

MISCELLANEOUS

Conference Report, H. R. No. 510, 80th Cong., 1st Sess., p. 52.. 14

Senate Report 573, 74th Cong., p. 15 14

STATUTES

California Code of Civil Procedure, Sec. 1875 15

National Labor Relations Act, Sec. 10(a) 14

United States Code Annotated, Title 15, Sec. 1 2

United States Code Annotated, Title 15, Sec. 15 ..... 2, 8

TEXTBOOKS

Hadlick, Treble Damages Under the Anti-Trust Laws, p. 14 9

IN THE

Supreme Court of the United States

October Term, 1951

No. 475.

CONFERENCE OF STUDIO UNIONS, an Unincorporated Association, *et al.*,

Petitioners,

vs.

LOEW'S, INCORPORATED, a Corporation, *et al.*,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari on Behalf of Respondents Loew's, Incorporated, Twentieth Century-Fox Film Corporation, Paramount Pictures, Inc., Columbia Pictures Corporation, R.K.O. Radio Pictures, Inc., Warner Bros. Pictures, Inc, Republic Productions, Inc., Samuel Goldwyn Productions, Inc, Hal E. Roach Studios, Inc., Universal Pictures Company, Inc., Warner Bros. Pictures Distributing Corp., Motion Picture Association of America, Inc., and the Respondent Officers and Employees of Said Companies.

The Opinions Below.

The Order of the District Court [R. 142-143], which states the basis of decision in that Court, was not officially reported. At the time of this writing, the opinion of the Court of Appeals [R. 162-170] has not been officially reported.

Jurisdiction.

The petition correctly sets forth the jurisdictional requisites. (Pet. 2.)

Questions Presented.

Does a plaintiff in a treble-damage action under the anti-trust laws state a claim for relief when the asserted injuries arise from acts which do not restrain commercial competition nor tend to produce that result?

Subsidiary questions presented are whether the Court of Appeals decision is supported on the additional grounds that: (a) The National Labor Relations Board has exclusive jurisdiction to prescribe the remedy for unfair labor practices, which precludes the federal courts from granting relief under the Sherman Act in this case, and (b) Congress did not intend in the anti-trust laws to cover restraints upon employment.

Statutes Involved.

The statutes involved here are Sections 1 and 15 of Title 15, U. S. C. A., the pertinent provisions of which are set forth in the petition. (Pet. 19-21.)

Additional Statement of Facts.

This case grows out of inter-union jurisdictional strife between two rival and powerful federations of studio labor unions, namely the Conference of Studio Unions (herein referred to as the CSU) and The International Alliance of Theatrical & Stage Employees and Moving

Picture Machine Operators of the United States and Canada (herein referred to as the IATSE).

The allegations of the complaint, which were adopted by intervenors, are that in June, 1946 the employers agreed with the IATSE that they "would cease to employ any person who was on said date a member of any of the following [CSU] unions * * *" and "that they would not engage any such person unless he had either given up his membership in said union or had obtained a work permit card from a local of the IATSE"; that to perform the work theretofore performed by members of the CSU unions, the employers "would thereafter employ only members of locals of the IATSE or persons who procured the written consent of a local of the IATSE" [R. 29-30, 73, 87-88]; that members of CSU unions subsequent to said date were discharged and have since been unable to secure employment in their customary work [R. 36, 72, 87-88] and others were refused employment until their union withdrew from the CSU [R. 32, 73-74, 87-88]; and that by reason of such action the plaintiff unions and their members have suffered damages. [R. 36-37, 74, 83, 88-89, 93.]

It is further alleged that the aforesaid closed shop agreement between the employers and the IATSE was part of a plan to eliminate the competition of other motion picture companies called "Independents" and thus to restrain interstate commerce in motion pictures; that the employers and the IATSE agreed that the IATSE would "furnish its most skilled members to render services only

to defendant Majors" and would "refrain from furnishing skilled members to any of the Independents unless and until all of the Majors were suppied with sufficient employees" [R. 29, 30, 73, 87]; that the IATSE would require the Independents to pay more for labor than was required of the employers [R. 30-31, 73, 87]; that the employers would curtail the production of motion pictures, would refrain from releasing pictures "for as long a period as possible," and would endeavor to persuade exhibitors to exhibit re-issues of old pictures and to run all pictures for longer periods of time than previously had been the practice [R. 29, 73, 87]; that pursuant to said plan, the IATSE withheld its skilled members from the Independents and required the Independents to pay discriminatory rates for labor; that the employers curtailed production of pictures, hoarded pictures, re-issued old pictures, and induced exhibitors to play the re-issues and to lengthen the playing time of all pictures; that by reason of such practices the Independents have curtailed their production of pictures. [R. 31-35, 73, 87.]

In this case, therefore, as in a previous companion case hereinafter discussed, injuries resulting from purported discharges and refusals to rehire are the gravamen of the action, and, in an effort to state an anti-trust claim, an attempt to injure the Independents and thus to restrain interstate commerce is alleged. It is significant, however, that:

(1) None of the Independents is a party to this action, either as plaintiff, defendant or intervenor.

(2) There is no allegation that petitioners suffered or are threatened with any injury because of the alleged acts done to eliminate the competition of the Independents, despite the fact that it is *only* those purported acts which could have affected prices or markets.

(3) The only damage which petitioners allege that they have suffered is damage caused by the enforcement of a purported closed shop agreement between the employers and the IATSE.

(4) There is no allegation that the individual petitioners ever sought to join or to secure permits from the IATSE in order to make themselves eligible for employment under the alleged closed shop agreement, or that the IATSE ever refused such membership or permits.

Indeed, the foregoing statement of the basic facts alleged by petitioners shows clearly that this case presents nothing more than an attempt by one labor organization, which was defeated in a jurisdictional struggle with its ancient rival, to utilize the federal courts to avenge itself upon the victorious rival union and upon the employers. Moreover, this attempt was made, as will be shown hereinafter, after their pretentious claims of conspiracy and unlawful acts had been rejected by the tribunal, namely, the National Labor Relations Board, which has exclusive jurisdiction to remedy the asserted injuries to petitioners.

This Case Does Not Present Any Novel or Important Question of Federal Law.

This Court has refused to grant certiorari in the following companion cases to the instant case: *Schatte v. IATSE*, 70 Fed. Supp. 1008, aff'd (9th Cir., 1948), 165 F. 2d 216, *cert. den.* 334 U. S. 812; *Schatte v. IATSE*, 84 Fed. Supp. 669, aff'd (9th Cir., 1950), 182 F. 2d 158, *cert. den.* 340 U. S. 827 (1950), reh. den. 340 U. S. 885; *Studio Carpenters Local Union No. 946 v. Loew's, Inc., et al.*, 84 Fed. Supp. 675, aff'd (9th Cir., 1950), 182 F. 2d 168, *cert. den.* 340 U. S. 828 (1950), reh. den. 340 U. S. 885; and *MacKay v. Loew's, Inc., et al.*, 84 Fed. Supp. 676, aff'd (9th Cir., 1950), 182 F. 2d 170, *cert. den.* 340 U. S. 828 (1950), reh. den. 340 U. S. 885. One of the foregoing cases, the second *Schatte* case, presented the same issue as the instant case.

The background of facts here is the same as in the previous companion cases—the Hollywood motion picture studios labor dispute of September, 1946. Originally the Studio Carpenters Union Local No. 946 was a party plaintiff in the instant case, but it withdrew by stipulation. [R. 95-97.] Thereafter the Studio Carpenters Union and some of its members filed the above named *Schatte, Studio Carpenters Union* and *MacKay* cases. Because motions to dismiss were granted earlier in these three cases than the motion for judgment on the pleadings in the instant case, it has taken longer for the Petition for Certiorari in this case to reach this Court.

In the second *Schatte* case there was alleged, among other things, a purported Sherman Act conspiracy and the same purported injury as is alleged in the case at bar. In denying relief in that case the Court of Appeals succinctly stated the applicable principle of law governing this

case, when it said: "The loss of their rights of employment is not a result of any lessening of commercial competition among the studios." In the instant case, the Court of Appeals noted that this "same observation holds true."[1] A contrary holding not only would have conflicted with decisions of this Court, but would have extended the anti-trust laws to cover almost the entire field of labor disputes. There is no more reason for this Court to disturb the conclusion of the Court below in this case than there was in the previous *Schatte* case.

There Is No Conflict of Decision Between Courts of Appeals Which Would Warrant the Grant of Certiorari Here.

Petitioners' contention that there is a conflict of decisions is without merit. To establish the asserted conflict, petitioners cite decisions which imply that a loss of employment can be an injury to business or property under the anti-trust laws (Pet. 13): *Roseland v. Phister*, 125 F. 2d 417; *Vines v. General Outdoor Advertising*, 171 F. 2d 487; *Gardella v. Chandler*, 172 F. 2d 402, and *Anderson v. Ship Owners*, 272 U. S. 359. These cases are relevant, if at all, to the ground for decision in the District Court [R. 143, 166], but they are not relevant to the basis of decision in the Court of Appeals. [R. 167, 170.] Likewise, the other cases cited by petitioners are in no way in conflict with the decision of the Court of Appeals in the case at bar.

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[1]Indeed, petitioners in the instant case, recognizing the controlling effect of the second *Schatte* decision upon the instant case, filed with this Court in that case a "Motion for Leave to File Briefs *Amicus Curiae* on Behalf of Petitioners." This motion was denied by this Court. (340 U. S. 827 (1950).)

Petitioners refer to no decision of a Court of Appeals, and we know of none, which conflicts with the Court of Appeals decision that a private litigant *not* claiming to have been injured by a restraint of commercial competition, *i. e.*, by price or market control, may not recover treble damages under the anti-trust laws.

The Court Below Was Clearly Correct in Holding That a Claim Under the Sherman Act Is Not Stated Here Because the Alleged Damages Did Not Result From Any Act Prohibited by the Anti-Trust Laws.

The Sherman Act (15 U. S. C. A. 15) gives a cause of action for treble damages to

> "any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws * * *."

Petitioners argue that because a conspiracy to restrain trade is forbidden by the anti-trust laws, it is sufficient therefore for them merely to show such an unlawful conspiracy and allege damages without showing any casual or other connection between the injury to them and a restraint of commercial competition. But injuries to private litigants cannot flow from a conspiracy: they must be the result of an act. Courts and commentators have consistently declared that to recover treble damages the plaintiff must show not only a violation of the anti-trust laws but damages which result from *acts* which constitute a violation of the anti-trust laws. In short, the injury must result from acts which tend to restrain commercial competition or to control prices. (*Schatte v. IATSE,*

182 F. 2d 158, 167, *cert. den.* 340 U. S. 827 (1950), reh. den. 340 U. S. 888; *Suckow Borax Mines Consolidated, Inc. v. Borax Consolidated Limited, et al.* (9th Cir., 1950), 185. F. 2d 196, 208; *Glenn Coal Co. v. Dickinson* (4th Cir., 1934), 72 F. 2d 885, 887; *Peterson v. Borden Co.* (7th Cir., 1931), 50 F. 2d 644, 645-646; *Jack v. Armour & Co.* (8th Cir., 1923), 291 Fed. 741, 745; Hadlick, Treble Damages Under the Anti-Trust Laws, at page 14.)

In view of these principles, it is important to ascertain whether the acts which are alleged to have damaged petitioners were acts which restrained trade or commerce.

Petitioners are suing for damages because individual petitioners allegedly were discharged and replaced by members of a rival union. [R. 30, 36-37, 73-74, 87-88.] Setting aside any question as to whether such action was legally justified or not, the fact remains that if any injury was suffered by petitioners it was suffered in the ordinary course of a jurisdictional labor dispute which is immune as such from the proscription of the anti-trust laws. (*Apex Hosiery Company v. Leader* (1940), 310 U. S. 469; *U. S. v. Hutcheson* (1941), 312 U. S. 219; *U. S. v. A. F. of Musicians* (D. C. Ill., 1942), 47 Fed. Supp. 304, aff'd (1943) 318 U. S. 741; *United Brick, Etc. Workers v. Junction City Clay Company* (6th Cir., 1946), 158 F. 2d 552.)

Even if we assume that the complaint states the elements of an unlawful conspiracy against the Independents, that conspiracy had nothing to do with petitioners who lost their jobs in the course of an ordinary jurisdictional labor dispute. Such loss involved no question of control of markets and prices. The Court of Appeals correctly said in its opinion that: "Not one of the acts alleged to

have caused injury to the appellants effectuated or tended to create a restraint on commercial competition in the motion picture industry." [R. 169.]

The treble-damage remedy provided by the anti-trust laws is a drastic one. For that reason courts have held that the scope of those laws must be limited to injuries received as a direct consequence of combinations to restrain free competition and to control markets and prices. (*Apex Hosiery Co. v. Leader, supra; United Brick & Clay Workers of America v. Junction City Clay Co., supra.*) Injuries which are received by reason of agreements between labor organizations and employers, such as closed-shop contracts or other restrictive arrangements, are not actionable under the Sherman Act, no matter why they were made (*Hunt v. Crumboch* (1945), 325 U. S. 821) unless they are designed to and do injure the plaintiff by reason of price or market control. (*Allen Bradley Co. v. Local Union No. 3,* 325 U. S. 797, 812 (1945).) The discharges of these petitioners, of course, had nothing to do with either of those elements, and the Court of Appeals correctly so held.

It is surprising that petitioners assert (Pet. 1-2) that their action is based upon "an Allen-Bradley type of conspiracy." To have an *Allen-Bradley* type case here the parties suing would have to be the Independents who, under the allegations, conceivably could have been injured through a lessening of commercial competition. The present petitioners are in a different position, for their purported damage, as the Court of Appeals pointed out, "does not flow from any injury to the competitive situation of the motion picture industry, that is, their injury has not arisen from the acts allegedly perpetrated against the Independents." [R. 168.]

Therefore this case bears no resemblance to the *Allen Bradley* case, where this Court found an "unholy alliance" between a group of employers and a group of unions for the purpose and with the effect of controlling markets and prices. It held that the plaintiff there, an independent manufacturer who was shut out from the market by such combination, could have redress by injunction against such unlawful control of markets and prices. But this Court made it clear in the *Allen Bradley* decision that the plaintiff could not have an injunction against acts done in the course of a labor dispute or against ordinary incidents of labor relations, such as agreements, including closed-shop agreements, between employers and unions. The acts and contracts of the union were held enjoinable only to the extent that they tended to control markets and prices to the injury of plaintiff by reason thereof. It will be recalled that in accordance with the directions of this Court, the District Court thereafter modified its judgment in the *Allen Bradley* case, and, upon the second appeal, the Court of Appeals ordered the judgment further modified to carry out the mandate of this Court by declaring that the injunction did not apply to acts of the union except those taken in combination with non-labor groups "to control prices and markets." (*Allen Bradley Co. v. Local Union No. 3* (2nd Cir., 1947), 164 F. 2d 71, 75, after decision in 325 U. S. 797 (1945).)

It follows that when a conspiracy contemplates acts which are in violation of the anti-trust laws (*i. e.*, restraint of interstate commerce) and also acts which are not so prohibited, a plaintiff can recover treble damages under the anti-trust laws only if he can show injury by reason of some act of defendant which tends to produce the prohibited restraint. There is no allegation of such

injury in the complaint here. The injury alleged results not from any act restraining competition of the Independents but simply and solely from the enforcement of a purported closed shop contract, imposing labor standards and having no effect whatsoever upon the Independents, prices, markets, or upon commercial competition.

Although petitioners contend they allege a single combination (Pet. 7), even under their own analysis it contained several phases and the combination alleged is divisible. (*Paramount Famous Lasky Corporation v. National Theatres Corporation* (4th Cir., 1931), 49 F. 2d 64, 66; *Oregon Steam Nav. Co. v. Winsor* (1873), 87 U. S. 64, 70-71.) Even if the Independents had been injured by the combination alleged, still this would not help petitioners, whose injury, if any, did not result from any restraint of or act tending to restrain commercial competition.

> "A plaintiff may not, therefore, assume the role of a *deus ex machina* for other parties and found a cause of action in its own favor on discrimination in violation of the Clayton Act as to such other parties." (*Carbonic Gas Co. v. Pure Carbonic Co.* (D. C. N. Y., 1933), 4 Fed. Supp. 992, 993.)

Petitioners have correctly noted (Pet. 13) that it is the *source* of the injury which is the test of a right to state a claim for treble damages under the Sherman Act. Since a conspiracy of itself does not give rise to a cause of action for treble damages, the private litigant must show an injury resulting from some act which is forbidden by the anti-trust laws. And the act, *i. e.*, the *source* of the injury, as the Court of Appeals here held, must be a restraint of prices or markets or acts tending to produce such a restraint. There was no such injury here.

A Valid Alternative Ground for the Decision Below Is That It Would Invade the Exclusive Jurisdiction of the National Labor Relations Board for the Federal Courts to Provide a Remedy Here Either by Way of Damages or Injunction.

An analysis of the allegations of the complaints in this case and of the applicable provisions of the National Labor Relations Act is presented in the Appendix to this brief. This analysis shows that each purported act which allegedly caused damage to petitioners was, if committed, an unfair labor practice. The exclusive power to remedy such acts has been committed by Congress to the National Labor Relations Board, which was created for the purpose of establishing a paramount, comprehensive, and exclusive scheme for the detection, prevention and correction of unfair labor practices affecting interstate commerce. (*Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 264 (1940); *Phelps Dodge Corp. v. Labor Board*, 313 U. S. 177, 188, 194 (1941); *Schatte v. IATSE* (9th Cir., 1950), 182 F. 2d 158, 165-166, *cert. den.* 340 U. S. 827 (1950), reh. den. 340 U. S. 885; *United Electrical Radio & Machine Workers of America v. International Brotherhood of Electrical Workers, et al.* (2d Cir. 1940), 115 F. 2d 488, 490, 491.)

If unfair labor practices could be remedied by the courts through the granting of injunctions and damages in civil actions under the anti-trust laws, then the exclusive juris-

diction over unfair labor practices which Congress committed to the Labor Board,[2] and the entire purpose of Congress in having uniformity of regulation, policy and decision in labor matters would be defeated. Therefore we contend that the Sherman Act and the Labor Act must be construed together and the general statute (Sherman Act) must yield to the particular statute (Labor Act) which prescribes an exclusive remedy. Such a construction is consistent with the intent of Congress in the enactment of the National Labor Relations Act as is shown by the following excerpt from page 15 of Senate Report 573, 74th Congress:

> "Section 10(a) gives the National Labor Relations Board exclusive jurisdiction to prevent and redress unfair labor practices, and, taken in conjunction with section 14, establishes clearly that *this bill is paramount over other laws that might touch upon similar subject matter. Thus, it is intended to dispel the confusion resulting from dispersion of authority* and to establish a single paramount administrative or quasi judicial authority in connection with the development of the Federal American Law regarding collective bargaining."

Over the past five years, the Labor Board has made a number of decisions, both in unfair labor practice cases and in representation cases, affecting the motion picture

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[2]The elimination by the 1947 amendments to the National Labor Relations Act of the word "exclusive" from Section 10(a) of the Act, does not change the Board's exclusive jurisdiction in this respect. (*Schatte v. IATSE* (9th Cir., 1950), 182 F. 2d 158, 165-166; *Amazon Cotton Mills v. Textile Workers Union of America* (4th Cir., 1948), 167 F. 2d 183, 187; Conference Report, H. R. No. 510, p. 52, 80th Cong., 1st Sess.)

industry. [R. 116-140.][3] These decisions have had the salutary effect of eliminating industrial strife in the motion picture industry. In this connection, we respectfully submit that the "confusion resulting from dispersion of authority" which Congress intended to dispel by the enactment of the Labor Act, would instead be confounded if in the instant case a federal court had jurisdiction to grant relief, because any relief would necessarily nullify orders and directives of the National Labor Relations Board.

Congress could not have intended that the employers could be put in a situation where if they complied with orders of the Board they would be in contempt of court, and if they complied with a court's order they would

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[3]We believe that these matters constitute public and private official acts of an executive agency of the United States which may be judicially noticed. (Cal. Code of Civil Procedure, Sec. 1875; *Pittsburgh Plate Glass Co. v. N. L. R. B.* (1941), 313 U. S. 146, 157; *Caha v. U. S.* (1894), 152 U. S. 211, 221.) In any event it is apparent that to grant relief in a Sherman Act proceeding might well run counter to the decisions and directions of the National Labor Relations Board and could well put the employers in a position where they would be ground between a judgment of a Court and a conflicting order of the Labor Board. Such conflicts would be inevitable if two tribunals asserted jurisdiction to remedy the same purported wrong. Certainly the comprehensive plan of the National Labor Relations Act for eliminating restraints upon interstate commerce could be impaired and even nullified if the courts under the Sherman Act could issue restraining orders which the Labor Board had refused to issue, or require payments of damages or back pay in situations where the Labor Board had determined damages or back pay should not be ordered, or could compel an employer to recognize or deal with a particular union when the Labor Board had ordered the employer to recognize and deal with a different union.

violate orders and directives of the Board. Yet this would be the necessary effect of any judgment granting relief to petitioners in the case at bar. There would be a serious interference with the exclusive jurisdiction of the Board and with Board decisions if petitioners were able to circumvent the Labor Board and induce the federal courts to take action directly contrary to that already taken by the Board.

In an analogous situation with regard to the Shipping Act in the *Cunard* case (*United States Navigation Co. v. Cunard Steamship Co.*, 50 F. 2d 83, affirmed 284 U. S. 474 (1932)), Circuit Judge Augustus Hand well stated the reason why anti-trust remedies were not available. In the following quotation from the opinion in that case, we have substituted the word "labor" where Judge Hand used the word "shipping" (p. 90):

> "No doubt, if the allegations in the amended bill are found to be correct, the Anti-Trust Acts have been violated, but the [Labor] Act has been violated as well. Though the remedies under the Anti-Trust Acts are thought by plaintiff's counsel to apply, it does not follow that they do, where the frame of the [Labor] Act indicates another procedure. We find that all the wrongs alleged are violations of the [Labor] Act and hold that the plaintiff must seek its remedy thereunder.
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> * * * * * * * * *
>
> "* * * We think that every reason of policy and convenience should prompt the courts to 'take arms'

against a sea of trouble by requiring resort to the [Labor] Board in situations like the present. That tribunal has exclusive jurisdiction here because of the nature of the questions involved and the broad powers given to it under the act.

* * * * * * * *

"It seems clear that any disposition of this suit other than that by the court below would not only add enormously to judicial labors, but would hopelessly complicate the situation we have before us by applying two separate and in some respects inconsistent remedies to transactions already difficult enough in themselves. We hold that the analogy of the decisions under the Interstate Commerce Act is complete, and that the broad powers given by the [Labor] Act furnish added reason for denying injunctive relief."

The enactment of the Labor Act necessarily limited the scope of existing federal statutes, such as the Sherman Act, just as the passage of the Norris-La Guardia Act limited the scope of the Sherman Act by removing certain types of activities from its prohibitions (*United States v. Hutcheson* (312 U. S. 219 (1941).) Congress has committed exclusive jurisdiction over the conduct which allegedly caused injury to petitioners to the Labor Board and petitioners may pursue their remedies before the Board and in no other forum.

The Decision of the Court of Appeals Is Also Supportable on the Ground That Petitioners Were Not Injured in Their Business or Property Within the Meaning of the Sherman Act.

We have heretofore noted that the complaint alleges that the IATSE and the employers agreed to discharge the CSU members and not to reemploy them unless they became members of or obtained a work permit from the IATSE [R. 29-30, 73, 87-88]. There is no allegation that the individual petitioners ever sought to join or secure permits from the IATSE in order to make themselves eligible for employment under the alleged closed shop contract or that the IATSE ever refused such membership or permits. In essence, the individual petitioners claim damages because they were refused a right to work under the jurisdiction of one union (CSU) rather than another (IATSE).

The employment of the individual petitioners was solely one at the will either of the employer or the employee. Such employment is not a business nor is it a property right a loss of which can give rise to a claim for treble damages under the anti-trust laws. (*Gerli v. Silk Ass'n of America* (S. D. N. Y. 1929), 36 F. 2d 959, 960-961; *Corey v. Boston Ice Co.* (D. C. Mass. 1913), 207 Fed. 465, 466.) While employment might be said to be business or it might be said to be property for some purpose not here material, it is not the kind of business or property contemplated by Congress in the Sherman Act. "* * * Congress did not intend in the anti-trust acts to cover restraints upon employment." (See *Gardella v. Chandler* (2d Cir., 1949), 172 F. 2d 402, 406.)

The union petitioners claim damages resulting from loss of revenue, resulting from withdrawal of member unions,

expenditures for the purpose of endeavoring to negotiate agreements, and in endeavoring to reach agreements with defendant companies for the rehiring of CSU members. [R. 36-37.] In essence, the union petitioners claim damage because their rival in a jurisdictional struggle between unions was successful. Such damages are not compensable under the anti-trust laws. (*United States v. Hutcheson* (1941), 312 U. S. 219-232; *United States v. Carrozzo* (N. D. Ill. 1941), 37 Fed. Supp. 191, aff'd (1941), 313 U. S. 539; *Terrio v. S. N. Nielsen Construction Co.* (E. D. La. 1939), 30 Fed. Supp. 77.)

The business or property an injury to which gives rise to an action for treble damages under the Sherman Act is business or property which can be directly injured by monopoly prices or control of markets and there is no way except indirectly that union membership or employment can be so injured.

Conclusion.

There is no conflict between decisions of Courts of Appeals. This case does not present any novel or important question of federal law and the question that it does present has been correctly decided. In a companion case presenting the same issue this Court has refused to grant *certiorari*. The Petition for Certiorari here should also be denied.

Respectfully submitted.

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